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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,962	01/21/2004	Hironobu Takizawa	17378	3889

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EXAMINER	
TOWA, RENE T	

ART UNIT	PAPER NUMBER
3736	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/761,962	TAKIZAWA ET AL.	
	Examiner	Art Unit	
	RENE TOWA	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 December 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3,11,13-28,30,32-44 and 50* is/are pending in the application.

4a) Of the above claim(s) *3,11,13-28,30 and 32-43* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *44 and 50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This Office action is responsive to an amendment filed December 29, 2010. Claims 3, 11, 13-28, 30, 32-44 & 50 are pending. Claims 3, 11, 13-28, 30 & 32-43, are withdrawn as pertaining to a non-elected invention. Claims 1-2, 4-10, 12, 29, 31, 45-49 & 51-53 have been cancelled. Claim 44 has been amended.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 44 & 50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims require a net formed of a material that is elastically formed of a fine member taking the shape of a bowl by gravity; wherein said material is also formed of a magnetic material. However, the Applicant's specification is devoid of any description of a type of magnetic material shaped as a net that is capable of both taking the shape of a bowl by gravity due to its elasticity and attracting one of a magnetic material and a magnet within a medical capsule.

4. Claims 44 & 50 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a retrieval net that is formed by netting fine wire along a circular frame in a grid configuration in a manner such that the retrieval net is

elastic (second embodiment) **or alternatively** a magnet or magnetic metal is substituted for the retrieval net for catching the capsule (second modification of the second embodiment), does not reasonably provide enablement for a retrieval net that is formed by netting fine wire along a circular frame in a grid configuration in a manner such that the retrieval net is elastic **and is formed of** a magnetic metal for catching the capsule. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. **Claim 44** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman (US 3,540,433) in view of Foster (US 3,087,699) and further in view of Wray (US 4,063,701).

Brockman discloses a medical strainer device 20 comprising a foldable handle (28, 30) for adapting to a shape of a portion of a toilet bowl (see col. 3, lines 6-13; col. 4, lines 5-15); a catch unit 24 for catching a sample that is discharged from a patient's body with feces (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67). Brockman further discloses a medical strainer device 20 wherein the catch unit 24 is a filtering net 36 capable of holding a medical capsule discharged from a human body (i.e. since the unit 24 is capable of holding tapeworms and pinworms) (see figs. 1-5 & 8-12; column 3/lines 1-5, 7-13 & 15-22).

Brockman disclose a system, as described above, that fails to explicitly teach a catch unit comprising a net comprising a magnetic material.

However, **Foster** teach that it is known to provide a net (10, 14) with a magnetic material (11, 12, 15) (see figs. 1-2; col. 2, lines 47-71).

Moreover, **Wray** teaches that it is known to provide a catching unit 26 with a flexible net 52 wherein the mesh is formed of a fine member and takes the shape of a bowl by gravity; wherein the net 52 is provided inside along a circular frame 48 (see fig. 2; col. 3, lines 11-30).

Brockman teaches a system comprising a net for the collection of biological samples that are discharged within a patient's feces for later analysis (see abstract); since Brockman teaches a net, which comprises a fabric formed solely from interwoven plastic fabrics such as Dacron so that the entire net can be easily washed and sterilized for repeated use (see col. 3, lines 36-69); Foster teach that it is known to provide a net (10, 14) with a magnetic material (11, 12, 15) in order to achieve a wire fabric which combines the structural characteristics of known wire and synthetic fabrics without sacrificing any of the potential strength of such wire fabrics (see col. 1, lines 68-71), it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the system of Brockman with a net comprising a magnetic material as taught by Foster in order to achieve a wire fabric which combines the structural characteristics of known wire and synthetic fabrics without sacrificing any of the potential strength of such wire fabrics.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the device of Brockman as modified by Foster with a flexible net as taught by Wray in order to achieve a completely collapsible net so as to provide a pocket or pouch to facilitate settling of the capsule.

Moreover, since

a) one of ordinary skill in the art could have combined the teachings of Brockman with those of Foster and Wray as suggested in the rejections supra by known methods,

b) in the combination, each element (i.e. the strainer of Brockman, the magnetic material of the screen of Foster, the handle of Brockman and the collapsible nature of the net of Wray) in the combination would have performed the same function as it did separately; and,

c) one of ordinary skill in the art would have recognized that the results of the combination were predictable,

The Examiner submits that combining prior art elements according known methods to yield predictable results has recently been held to be obvious (see KSR International Co. v. Teleflex Inc., 550 U.S.---, 82 USPQ2d 1385 (2007)).

7. **Claim 50** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman ('433), Foster ('699), Wray ("701) and further in view of Paulin (US 4,309,782).

Brockman as modified by Foster and Wray discloses a system, as described above, that teaches all the limitations of the claim except for a bag to enclose the specimen together with a unit of the specimen retrieval device.

However, **Paulin** discloses a device comprising a bag 12 to enclose a specimen together with a catch unit 46 of the specimen retrieval device 16 for temporary storage or transport, after the specimen has been collected (see abstract; see figs. 1-3; col. 2, lines 20-32 & 62-67).

Brockman teaches a sample retrieval device for collecting the fecal specimen; since Paulin teaches a bag for a storing a medical retrieval device for temporary storage or transport to a physician's office or a laboratory, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the system of Brockman as modified by Foster and Wray above with a bag as taught by Paulin in order to store and/or transport the collected specimen to a physician's office and/or laboratory.

8. **Claim 50** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman ('433), Foster ('699), Wray ("701) and further in view of Slover et al. (US 4,445,235).

Brockman as modified by Foster and Wray discloses a system, as described above, that teaches all the limitations of the claim except for a bag to enclose the specimen together with a unit of the specimen retrieval device.

However, **Slover et al.** disclose a device comprising a bag to enclose a specimen together with a catch unit of the specimen retrieval device for temporary storage or transport, after the specimen has been collected (see column 4/lines 21-25).

Brockman teaches a sample retrieval device for collecting the fecal specimen; since Slover et al. teach a bag for a storing a medical retrieval device for temporary

storage or transport to a physician's office or a laboratory, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the system of Brockman as modified by Foster and Wray above with a bag as taught by Slover et al. in order to store and/or transport the collected specimen to a physician's office and/or laboratory.

9. **Claim 44** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman (US 3,540,433) in view of Schuchardt et al. (US 4,206,000) and further in view of Wray (US 4,063,701).

Brockman discloses a medical strainer device 20 comprising a foldable handle (28, 30) for adapting to a shape of a portion of a toilet bowl (see col. 3, lines 6-13; col. 4, lines 5-15); a catch unit 24 for catching a sample that is discharged from a patient's body with feces (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67). Brockman further discloses a medical strainer device 20 wherein the catch unit 24 is a filtering net 36 capable of holding a medical capsule discharged from a human body (i.e. since the unit 24 is capable of holding tapeworms and pinworms) (see figs. 1-5 & 8-12; column 3/lines 1-5, 7-13 & 15-22).

Brockman disclose a system, as described above, that fails to explicitly teach a catch unit comprising a net comprising a magnetic material.

However, **Schuchardt et al.** teach that it is known to provide a filtering net with a magnetic material 23 for removing magnetic particles from a flow stream (see abstract; see fig. 1; see col. 3, lines 20-33).

Moreover, **Wray** teaches that it is known to provide a catching unit 26 with a flexible net 52 wherein the mesh is formed of a fine member and takes the shape of a bowl by gravity; wherein the net 52 is provided inside along a circular frame 48 (see fig. 2; col. 3, lines 11-30).

As admitted by the Applicant, it is known to provide biological sample carrying medical capsules that are discharged within a patient's feces with a magnetic material or magnet so as to conveniently remove the capsule from feces by situating a permanent magnetic material adjacent the capsule thereby separating the capsule from the feces; Brockman teaches a system comprising a net for the collection of biological samples that are discharged within a patient's feces for later analysis (see abstract); since Schuchardt et al. teach that it is known to provide a net with magnetic materials 23 to remove magnetic particles from a flow stream (see abstract & fig. 1), it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the system of Brockman with a net comprising a magnetic material as taught by Schuchardt et al. in order to conveniently remove the capsule from feces when the capsule is situated adjacent the magnetic material of the net so as to thereby separate the capsule from the feces.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the device of Brockman as modified by Schuchardt et al. with a flexible net as taught by Wray in order to achieve a completely collapsible net so as to provide a pocket or pouch to facilitate settling of the capsule.

Moreover, since

a) one of ordinary skill in the art could have combined the teachings of Brockman with those of Schuchardt et al. as suggested in the rejections supra by known methods,

b) in the combination, each element (i.e. the strainer of Brockman, the magnetic material of the screen of Schuchardt et al., the handle of Brockman and the collapsible nature of the net of Wray) in the combination would have performed the same function as it did separately; and,

c) one of ordinary skill in the art would have recognized that the results of the combination were predictable (i.e. rendering the screen of Brockman magnetic so as to attract a magnet or magnetic material),

The Examiner submits that combining prior art elements according known methods to yield predictable results has recently been held to be obvious (see KSR International Co. v. Teleflex Inc., 550 U.S.---, 82 USPQ2d 1385 (2007)).

10. **Claim 50** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman ('433), Schuchardt et al. ('000), Wray ("701) and further in view of Paulin (US 4,309,782).

Brockman as modified by Schuchardt et al. and Wray discloses a system, as described above, that teaches all the limitations of the claim except for a bag to enclose the specimen together with a unit of the specimen retrieval device.

However, **Paulin** discloses a device comprising a bag 12 to enclose a specimen together with a catch unit 46 of the specimen retrieval device 16 for temporary storage or transport, after the specimen has been collected (see abstract; see figs. 1-3; col. 2, lines 20-32 & 62-67).

Brockman teaches a sample retrieval device for collecting the fecal specimen; since Paulin teaches a bag for a storing a medical retrieval device for temporary storage or transport to a physician's office or a laboratory, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the system of Brockman as modified by Schuchardt et al. and Wray above with a bag as taught by Paulin in order to store and/or transport the collected specimen to a physician's office and/or laboratory.

11. **Claim 50** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman ('433), Schuchardt et al. ('000), Wray ("701) and further in view of Slover et al. (US 4,445,235).

Brockman as modified by Schuchardt et al. and Wray discloses a system, as described above, that teaches all the limitations of the claim except for a bag to enclose the specimen together with a unit of the specimen retrieval device.

However, **Slover et al.** disclose a device comprising a bag to enclose a specimen together with a catch unit of the specimen retrieval device for temporary storage or transport, after the specimen has been collected (see column 4/lines 21-25).

Brockman teaches a sample retrieval device for collecting the fecal specimen; since Slover et al. teach a bag for a storing a medical retrieval device for temporary storage or transport to a physician's office or a laboratory, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the system of Brockman as modified by Schuchardt et al. and Wray above with a bag as

taught by Slover et al. in order to store and/or transport the collected specimen to a physician's office and/or laboratory.

Response to Arguments

12. Applicant's arguments filed December 29, 2010 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 2002/0017049 to Millett et al. discloses a multipurpose fishing net.

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RENE TOWA whose telephone number is (571)272-8758. The examiner can normally be reached on Mon-Thurs, 8:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rene Towa/
Examiner, Art Unit 3736

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736